

Tax Revision and Reform Act of 1999

Franchise,
Excise
taxes
notice**ENTITIES SUBJECT TO THE TAX**

The Tax Revision and Reform Act of 1999, expands the types of business subject to franchise and excise taxes by defining “person” or “taxpayer” to include every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state chartered or national bank, state or federally chartered savings and loan association, and any other organization or entity engaged in business.

General partnerships and sole proprietorships are not subject to the tax.

Entities included under sections 401(a) (qualified pension, profit-sharing, or stock bonus plans) and 501(c and d) (religious, charitable, educational and similar organizations) of the Internal Revenue Code are not subject to tax, except to the extent they have income from activities unrelated to the scope of the activities which gave them exempt status. These would include activities which fall within Section 512 of the Internal Revenue Code.

Specific types of organizations which were exempt under prior law are also exempt under the new law. These include Masonic lodges and the like, regulated investment companies, and credit unions. Also exempt are certain limited liability companies, limited liability partnerships and limited partnerships which are venture capital funds, or which are engaged in farming, holding personal residences, or factoring accounts receivable.

EFFECTIVE DATES

The effective dates vary depending on the business entity and the provision of the act. The general rule is the new franchise and excise taxes go into effect for tax years beginning on or after July 1, 1999. Since most business entities use a calendar year as their tax year, this means the most will not come under the law until January 1, 2000.

An exception to the general rule relates to limited liability companies, limited partnerships and limited liability partnerships, in which one or more corporations, subject to the franchise and excise taxes under prior law, directly or indirectly, have in the aggregate an 80% or more ownership interest at any time after June 30, 1998. For these entities, the new law goes into effect for tax years ending on or after June 30, 1999.

Another exception involves four specific sections of the new franchise and excise tax laws, which for all entities go into effect for tax years ending on or after June 30, 1999. These are Tenn. Code Ann. Section 67-4-2014 and 67-4-2112, and Sections 67-4-2012(j) and 67-4-2111(j). The former two provisions strengthen the department's powers to deal with fraud and abuse. The latter provisions require taxpayers, who receive royalty income from licensees in Tennessee, to source the income to this state for purposes of apportionment.

REGISTRATION REQUIREMENTS

All entities subject to the tax, which are not currently registered for franchise/excise tax, must register with the department within 15 days of becoming subject to the tax or by August 30, 1999, whichever is later. This means that 80% corporate-owned limited liability companies, limited liability partnerships and limited partnerships, and taxable entities whose tax years begin on July 1, 1999, must register by August 30, 1999. A registration application is enclosed.

FILING REQUIREMENTS

The tax return is due on or before the fifteenth day of the fourth month after the close of the taxpayer's tax year. A six-month extension to file may be obtained if, on or before the original due date, the request is made and 100% of the current year's liability has been paid.

Quarterly estimated payments of franchise and excise taxes are required if the combined liability for the prior or current year is \$5,000 or more. The payments are due on the fifteenth day of

the fourth, sixth and ninth months of the current tax year and on the fifteenth day of the first month of the succeeding year. For years beginning July 1, 1999, through tax years beginning June 30, 2000, the minimum quarterly payment is the greater of (a) 25% of the prior year's combined franchise and excise tax liability, or (b) 25% of 50% of the current year's combined franchise and excise tax liability. For all other tax years (those beginning before July 1, 1999, or after June 30, 2000), the minimum quarterly payment is the lesser of (a) 25% of the prior year's combined franchise and excise liability, or (b) 25% or 80% of the current year's combined liability.

TAX RATES

EXCISE TAX - SIX PERCENT OF NET EARNINGS

The excise tax is levied at the rate of six percent of "net earnings," which is generally defined with reference to federal law, and subject to various adjustments. For taxpayers treated as partnerships under federal law, and for limited liability companies whose single member is a natural person and which choose to be treated as individual taxpayers under federal law, net earnings does not include amounts paid to partners or members which are subject to federal self-employment tax, or amounts contributed to qualified pension plans and the like.

FRANCHISE TAX - 25 CENTS PER \$100 OF NET WORTH

The franchise tax is levied at the rate of 25 cents per \$100 of "net worth." Generally, net worth is the value of the

taxpayer's assets less its liabilities, determined in accordance with generally accepted accounting principles.

However, net worth may not be less than the actual value of the property owned or used by the taxpayer in Tennessee, excluding any exempt inventory.

The law imposes a minimum franchise tax of \$100.

APPORTIONMENT

Taxpayers doing business both within and outside of Tennessee are entitled to apportion their business earnings.

Generally, the apportionment formula is the ratio of the taxpayer's property, payroll and sales in Tennessee to its total property, payroll and sales; with sales

counted twice in both the numerator and denominator of the fraction.

CREDITS

Credits are allowed, as under prior law, for the gross premiums tax paid by insurance companies, and for investment in industrial machinery and child day care centers. The jobs tax credit has been expanded to allow it to be taken against both the franchise and excise taxes and to base the amount of the credit which can be taken in any one year on the number of Tennessee employees.

Have questions or comments? Please let us know. [Contact us.](#)

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